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STATE OF CALIFORNIA

CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

In the matter of:

ZACATECAS TIRE SERVICE  
CORPORATION

TPID NO: 1006715-01

RESPONDENT.

ADMINISTRATIVE COMPLAINT  
FOR WASTE TIRE HAULER  
ADMINISTRATIVE PENALTIES

PUBLIC RESOURCES CODE  
SECTION 42950, ET SEQ.

AGENCY NO: 2012-011139-ADC

**INTRODUCTION**

This Administrative Complaint for Waste Tire Hauler Administrative Penalties is issued by the Department of Resources Recycling and Recovery ("CALRECYCLE") to ZACATECAS TIRE SERVICE CORPORATION ("RESPONDENT") seeking one thousand dollars (\$1,000.00). CALRECYCLE was formerly the California Integrated Waste Management Board ("CIWMB"). CALRECYCLE succeeded to CIWMB's authority on January 1, 2010, pursuant to Public Resources Code ("PRC") section 40401(a)(1). Section 42850(b) of the PRC authorizes

CALRECYCLE to issue a complaint to any person that may be administratively liable. This complaint is so issued based on the following facts:

### **STATEMENT OF FACTS**

1. CALRECYCLE has authority to inspect, regulate, and conduct enforcement actions regarding Waste and Used Tire Haulers ("hauler") within the State of California under PRC section 42950 et seq. and attendant regulations contained in Title 14 of the California Code of Regulations ("CCR").

2. Pursuant to Title 14, CCR section 18451 (a), Waste tire haulers, retreaders, waste tire generators, and end-use facilities shall comply with these regulations, unless exempted by PRC section 42954 and applicable procedures set forth in Section 18452.1-18453.2.

3. Pursuant to Title 14, CCR section 18450 (a)(21), the California Uniform Used and Waste Used Tire Manifest System form ("Manifest Form") shall be completed by the waste tire hauler and shall accompany each transported shipment of used or waste tires.

4. Pursuant to Title 14, CCR section 18450 (a)(11), a Comprehensive Trip Log or ("CTL") means the Manifest Form developed by the Department (CALRECYCLE) pursuant to PRC section 42961.5.

5. Pursuant to Title 14 CCR section 18459.3 (a), The waste tire generator, and end-use facility shall retain a copy of the completed Manifest Form at their place of business for three (3) years. These records shall be made available to any authorized representative of the Department (CALRECYCLE) upon request.

### **VIOLATIONS OF THE CALIFORNIA UNIFORM WASTE AND USED TIRE MANIFEST PROGRAM**

6. On June 24, 2010, Kieran Au, Tire Grantee of the City of Los Angeles, conducted an inspection of RESPONDENT ZACATECAS TIRE SERVICE CORPORATION, located at 3635 S. Western Ave., Los Angeles, California, 90018 (the site). Inspector Au noted

RESPONDENT's failure to retain CTLs for three years. As documented in the Waste Tire Survey & Inspection Report ("Inspection Report") #I1-1140106, Inspector Au, advised Jonathan Garcia (identified as the manager) to retain the CTLs for three years.

7. On May 12, 2011, Jo Ann Frampton, Tire Grantee of the City of Los Angeles, conducted another inspection of the site. As documented in Inspection Report #I1-1162364, Inspector Frampton issued a Notice of Violation ("NOV") (in Spanish) to RESPONDENT ZACATECAS TIRE SERVICE CORPORATION for failure to retain CTLs. A 30-day compliance deadline of June 12, 2011 was set. Inspector Frampton indicated to Martin Garcia (identified as the owner) that he was missing CTLs for 2009 and 2011.

8. On August 25, 2011, David Joiner, Tire Grantee of the City of Los Angeles, conducted a re-inspection of the site to determine compliance with the NOV issued on May 12, 2011. As documented in Inspection Report #I1-1161844, Inspector Joiner issued another NOV to RESPONDENT ZACATECAS TIRE SERVICE CORPORATION for failure to comply with manifesting requirements. A 30-day compliance deadline of September 25, 2011 was set.

9. On September 30, 2011, Jo Ann Frampton Tire Grantee of the City of Los Angeles, conducted a re-inspection of the site. As documented in Inspection Report #I1-1162053, Inspector Frampton issued another NOV for the RESPONDENT'S continued violations and failure to retain CTLs and noted that RESPONDENT ZACATECAS TIRE SERVICE CORPORATION was in the process of obtaining a tire hauler license with the State of California. Inspector Frampton referred this matter to CalRecycle Enforcement.

10. On October 12, 2011, CalRecycle Enforcement received the referral from Inspector Frampton documenting RESPONDENT ZACATECAS TIRE SERVICE CORPORATION's tire hauler and manifesting violations.

### **ALLEGATIONS OF SPECIFIC VIOLATIONS**

11. CALRECYCLE is seeking administrative penalties of one thousand dollars (\$1,000) based on the above-mentioned facts and for the following violations as more specifically set forth in the foregoing paragraphs.

- 1 a. From June 24, 2010 through September 30, 2011, RESPONDENT failed to  
2 comply with the waste tire hauler registration and manifesting regulations by  
3 failing to maintain Manifest Forms at their facility located at 3635 S. Western  
4 Ave., Los Angeles, California 90018. As of March 5, 2012, a review of the  
5 Waste Tire Management System still showed no CTLs being entered.
- 6 b. RESPONDENT violated Title 14, CCR section 18451 (a), which states that  
7 waste tire haulers, retreaders, waste tire generators, and end-use facilities  
8 shall comply with these regulations, unless exempted by PRC section 42954  
9 and applicable procedures set forth in Title 14 CCR sections 18452.1-  
10 18453.2. RESPONDENT is not exempted by PRC section 42954 or Title 14  
11 CCR sections 18452.1-18453.2.
- 12 c. On at least four occasions, RESPONDENT violated Title 14, CCR section  
13 18459.3 (a), which states that the waste tire generator, and end-use facility  
14 shall retain a copy of completed Manifest Forms at their place of business for  
15 three years. These records shall be made available to any authorized  
16 representative of the Department upon request. On these same four  
17 occasions, RESPONDENT received notice that it was missing CTLs.

## 18 PENALTIES

19  
20 12. CALRECYCLE's authority to assess administrative penalties against  
21 RESPONDENT as a waste tire hauler is set forth in PRC section 42962(c), which states:  
22

23 In addition to the civil penalty which may be imposed pursuant to  
24 subdivision (a), the board may impose civil penalties administratively in an  
25 amount not to exceed five thousand dollars (\$5,000) for each violation of a  
26 separate provision or for continuing violations for each day that violation  
27 continues, on any person who intentionally or negligently violates any  
28

1 permit, rule, regulation, standard, or requirement issued adopted pursuant  
2 to this chapter. . .

3  
4 Under this section, RESPONDENT is subject to a separate administrative penalty of up  
5 to \$5,000.00 for each occasion upon which they have hauled waste tires without a valid Waste  
6 Tire Hauler Registration. Title 14 CCR Section 18464 allows the imposition of penalties  
7 ranging from \$100.00 to \$5,000.00 per load as an unregistered hauler.


8 13. Pursuant to Title 14 CCR section 18464, CALRECYCLE may assess a penalty  
9 between five hundred (\$500) and one thousand (\$1,000) for each count of unregistered  
10 hauling where the amount of tires hauled was between forty one (41) and one hundred (100)  
11 tires; and a penalty between one thousand (\$1,000) and two thousand (\$2,000) for each count  
12 of unregistered hauling where the amount of tires hauled was greater than one hundred (100)  
13 tires.

14 14. In setting an appropriate administrative penalty for RESPONDENT, as required  
15 by Title 14 CCR section 18465, CALRECYCLE has taken into consideration the following  
16 factors:

- 17 (1) The nature, circumstances, extent, and gravity of the violation.
  - 18 (2) Evidence that the violation was willful or negligent.
  - 19 (3) The good or bad faith exhibited by the party.
  - 20 (4) History of violation of the same or similar nature.
  - 21 (5) The extent to which the party has cooperated with the Department in  
22 remediating or injury caused by his or her violation.
  - 23 (6) The extent that the party has mitigated or attempted to mitigate any damage  
24 or injury caused by his or her violation.
  - 25 (7) Evidence of any financial gain resulting from the violation.
  - 26 (8) Such other matters as justice may require.
- 27  
28

1           15. Accordingly, CALRECYCLE hereby requests that an administrative penalty be  
2 assessed against RESPONDENT in the sum of one thousand dollars (\$1,000.00).

3  
4 Dated this 1 day of February, 2013.

  
MARTHA PEREZ  
Staff Counsel



## DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

801 K STREET, MS 19-01, SACRAMENTO, CALIFORNIA 95814 • (916) 322-4027 • [WWW.CALRECYCLE.CA.GOV](http://WWW.CALRECYCLE.CA.GOV)

### RIGHT TO A HEARING

You are hereby notified that that you are entitled to request a hearing to refute the allegations against you contained in the ADMINISTRATIVE COMPLAINT FOR WASTE TIRE HAULER ADMINISTRATIVE PENALTIES (Administrative Complaint). The enclosed REQUEST FOR HEARING/NOTICE OF DEFENSE form (Notice of Defense), when signed by or on behalf of the Respondent and returned to the Department of Resources Recycling and Recovery (CalRecycle) within 15 days of receipt of the Administrative Complaint, will acknowledge service of the Administrative Complaint and constitute a notice of defense. **If you wish to have a hearing on this matter, you must complete and return the enclosed Notice of Defense to the address indicated on the form within 15 days of receipt of the Administrative Complaint. Failure to complete and return the Notice of Defense within 15 days will be deemed a waiver of your right to a hearing.**

If you request one, a hearing will be conducted before a Hearing Officer, a CalRecycle employee that does not work on or advise the tire programs, at one of our offices or other locations throughout the State, upon the charges made in the Administrative Complaint.

Please refer to the attached document entitled "Representing Yourself in a CalRecycleTire Hearing" for further guidance on hearing procedures and basic information on representing yourself at a CalRecycle tire hearing.



1. You are entitled to review the evidence being used against you and request a list of witnesses by applying to CalRecycle's attorney.
2. You may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you.
3. You are entitled, upon request, to be provided with the assistance of an interpreter, if you or your witnesses do not proficiently speak or understand the English language. If you require the assistance of an interpreter, timely notice of this fact should be given to CalRecycle's Hearing Clerk, so appropriate arrangements can be made. Generally, the cost is paid by the party requesting an interpreter, however, the Hearing Officer may order CalRecycle to pay if you cannot.
4. You are hereby notified that, pursuant to the provisions of 14 CCR section 17050 et seq., the violations alleged against you may cause you to be placed on CalRecycle's Unreliable Contractors, Subcontractors, Borrowers, and Grantees list. Placement on this list may prohibit you from obtaining contracts, loans, or grants from CalRecycle for up to three years.
5. Continuances are not favored. If you need a continuance, immediately submit a written request to Hearing Clerk- TIR, CalRecycle Legal Office, 801 K Street, MS 19-03, Sacramento, California 95814, by fax to 916-322-8768, or by e-mail to [HearingClerk.TIR@CalRecycle.ca.gov](mailto:HearingClerk.TIR@CalRecycle.ca.gov). Your written request for a continuance will be forwarded to the Hearing Officer for decision. Requests without good cause will be denied.

# Representing Yourself in a CalRecycle Tire Hearing

CalRecycle is providing this information to help you prepare for your administrative hearing. This information is not a substitute for having an attorney. We hope this information will help you better understand the process and prepare for the hearing.

## How Do I Request A Hearing?

You have received this because you have been served with either a Statement of Issues or Administrative Complaint (Accusation) issued by the Waste Permitting, Compliance, and Mitigation Division of the Department of Resources Recycling and Recovery (CalRecycle). You may request a hearing to have a Hearing Officer hear your side of the matter before your permit or registration is denied, suspended or revoked, or before penalties are assessed against you. If you do not request a hearing, a Default Decision will be issued ordering the denial, suspension, or revocation of your permit or registration or ordering you to pay the penalty amount requested in the Accusation. If you wish to request a hearing, you must complete and send the Request For Hearing / Notice Of Defense to the address designated on that form. On that form you must state the reason you are requesting a hearing. You must provide enough information for CalRecycle to understand the facts, defenses, and other issues you hope to have addressed at the hearing.

## What Will My Hearing Be Like?

Your hearing will be very similar to a trial in court, with witnesses, exhibits and rules of evidence. A Hearing Officer will preside under a delegation of authority from CalRecycle's director. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. However, an attorney may be better able to present your side.

When the hearing begins, each side may present an opening statement. This tells the Hearing Officer what that side intends to prove. Each side can then offer relevant evidence to prove its case.

Evidence can be testimony taken under oath at the hearing or it can be certain kinds of documents, such as business records. You must prove that the documents you submit are authentic. This means that you must be able to show that a document actually is what you say it is; usually this is accomplished through witness testimony.

CalRecycle usually presents its evidence first. CalRecycle's attorney will ask its witness questions (direct examination). When the attorney is finished, it will be your turn to ask questions of that witness (cross-examination). CalRecycle's attorney will have a second chance to ask questions (redirect) and then you will have a second chance (recross).

After CalRecycle has presented its witnesses, it will be your turn. You may make a statement yourself and call your witnesses. As you finish with each of your witnesses (and your testimony), the CalRecycle attorney will cross-examine. As stated before, you will have a second chance to ask questions of each witness. Even if you choose not to testify, CalRecycle's attorney may cross-examine you.

After you have presented your case, CalRecycle may call rebuttal witnesses. Rebuttal witnesses may only testify to issues you brought up in your case. If CalRecycle calls rebuttal witnesses, you may be allowed to call additional witnesses to address the issues discussed by rebuttal witnesses. Few hearings involve rebuttal witnesses.

Remember: Before the hearing closes, you must submit all the evidence you want the Hearing Officer to consider.

After all testimony has been heard, each side can make a closing argument. Usually CalRecycle goes first; you go next. The party that goes first has the opportunity to make the last comments.

Closing argument is your chance to sum up the evidence and tell the Hearing Officer why you should prevail in your case. It can

address only those facts brought out in testimony of witnesses or in documents received into evidence. In some cases, the Hearing Officer may want the parties to submit written, instead of oral, argument. If so, a schedule will be set up for the written arguments.

## What Do I Need To Prove?

If a license, permit or registration for which you applied is being denied, the burden is on you to prove your side. You must prove you meet the qualifications for the license, permit or registration.

If you already have a license, permit or registration against which CalRecycle is imposing discipline, CalRecycle has the burden of proof. This means that CalRecycle must establish that you violated the laws or regulations charged in the Accusation or Statement of Issues.

Even when CalRecycle has the burden of proof, you should prepare to offer evidence of your good character and conduct, mitigation, rehabilitation and evidence refuting the charges, as appropriate.

## May I See CalRecycle's Evidence Against Me?

CalRecycle's evidence is also called discovery. You are entitled to request discovery of the information CalRecycle has to prove the charges made against you or enable you to mount a defense against them. A Request For Discovery form is available on CalRecycle's website, or may be obtained by contacting CalRecycle's attorney or Hearing Clerk. Simply send the completed Request for Discovery to CalRecycle's attorney if you wish to obtain a copy of the investigative files and any other documents or relevant information CalRecycle has regarding your case. You may have to pay for copies. You also have a right to receive a witness list.

Generally, you must request "discovery" within 30 days of receiving the initial Accusation or Statement of Issues, or within 15 days of any supplemental Accusations or Statements of Issues. In some cases, these times may be shorter. Be sure to read the documents you receive to verify the time you have to request discovery.

CalRecycle has the same rights to get information from you. You may also be served with, or have included in the paperwork received already, a Request For Discovery on behalf of CalRecycle. You must make copies of the requested information available to CalRecycle by the date stated in the Request for Discovery.

## What Kind of Evidence Will I Need For the Hearing?

Depending on your case, you may want to bring witnesses who know about the issues involved with the charges against you. If there are documents, such as contracts, business records or checks that help prove your side, try to bring the original and three copies. You may bring photographs or other items that are relevant to your defense. Items you want to be considered must be left with the Hearing Officer. Generally, you may substitute copies of those items in place of the originals.

Documents and photographs must be authenticated. This is typically done through witness testimony, during which your witness, or yourself, if you choose to testify, will need to explain to the Hearing Officer what the document is, how the witness reliably knows what it is, and how it is relevant to your case.

## How Do I Get Records From a Business?

If you are a party to a hearing, you have the right to subpoena from individuals, businesses and government agencies relevant records or other things to be produced at the hearing. CalRecycle has a subpoena form available for download on its website, and a copy may also be mailed or emailed to you upon request. You must arrange to pay any required fees and have someone else serve the subpoenas. Only CalRecycle Hearing Officers or attorneys licensed in California acting on behalf of a party may sign a subpoena. If you

are proceeding without an attorney, contact CalRecycle's Hearing Clerk to obtain a blank subpoena form signed by a Hearing Officer. See also California Code of Civil Procedure, sections 1985-1985.4 for other important information.

## How Do I Get a Witness to Come to the Hearing?

A witness can come voluntarily to the hearing. However, a subpoena protects your right to have that person present. You may obtain the subpoena form by downloading it from CalRecycle's website, or by requesting that a copy be mailed or emailed to you. You must use the subpoena to compel the attendance of persons whose testimony is relevant to your case, unless that person agrees to appear voluntarily on your behalf. Witnesses are entitled to paid reimbursement of their time. See Government Code sections 11450.05, 11450.50, 68092.5-68093, and 68096.1-68097.10. You must arrange to pay required fees and have someone else serve the subpoenas. Only CalRecycle Hearing Officers or attorneys licensed in California acting on behalf of a party may sign a subpoena. If you are proceeding without an attorney, contact CalRecycle's Hearing Clerk to obtain a blank subpoena form signed by a Hearing Officer. See also California Code of Civil Procedure, sections 1985-1985.4 for other important information.

## Is It OK to Bring Letters Instead of Witnesses?

Some letters and other documents may be admitted in evidence for limited purposes, but generally it is better to bring witnesses who can help present your side of the case and answer any questions raised. The Hearing Officer will not speak with witnesses, except at the hearing itself. If you do choose to offer letters, declarations or other documents, make sure you understand what you must do to get them admitted in evidence. (For instance, see the discussion on authenticating documents above.)

*Remember: This hearing is your chance to tell the Hearing Officer your side. It is important to have your witnesses present at the hearing to testify.*

## If I Forget Something, Can I Send It Later to the Hearing Officer?

Your chance to present evidence is at the hearing. Only in rare cases will the Hearing Officer allow you to send evidence later.

## Is There a Way To Settle This Without a Hearing?

Cases often settle without going to hearing. Contact the CalRecycle attorney to see if you can work something out.

## What If I Can't Be There On The Day Set?

You must show good cause to change a hearing date. If you cannot attend on the date and at the time shown, you must contact CalRecycle as soon as you know of the problem. To request a change of date, you must file a written request with the Hearing Clerk in CalRecycle's Legal Office, with a copy to CalRecycle's attorney, explaining the reasons for the change. The sooner you make your request, the more likely it will be granted.

*Remember: You must file a timely Notice of Defense in order to have a hearing.*

## Where Will The Hearing Take Place?

Hearings are scheduled at the CalRecycle office located closest to your residence or the location at which the transactions or events providing the basis for the Accusation or Statement of Issues occurred. CalRecycle's office locations are in Sacramento, Los Angeles, Riverside and San Diego. In some circumstances, CalRecycle may conduct a hearing at a location other than a CalRecycle office. If you feel that a different location would work better for you please contact CalRecycle's Hearing Clerk as early as possible to request a location change. CalRecycle reserves the right to deny the request upon consideration of issues including, without being limited to, the

ability of CalRecycle staff and the Hearing Officer to travel to the location, and any fees that may be incurred for travel plans already made by CalRecycle staff, the Hearing Officer, and CalRecycle's witnesses.

### **What If I Don't Attend?**

If you request a hearing and do not attend the hearing, CalRecycle can still proceed with the case against you. (If you do not request a hearing, CalRecycle will issue a Default Decision against you.)

### **What If I Need An Interpreter?**

If you or a witness need a sign or language interpreter, immediately contact the CalRecycle attorney or Hearing Clerk so that a certified interpreter can be provided. Normally, it is not sufficient to bring a friend or relative to interpret for you.

### **Will The Hearing Location Be Accessible To People With Disabilities?**

Hearing locations are to be accessible to persons with disabilities. However, check in advance with CalRecycle's Hearing Clerk to assure accessibility. In addition, if you know persons who plan to attend have special needs that require reasonable accommodation, please contact CalRecycle's Hearing Clerk as soon as possible, so arrangements can be made.

### **What Is The Contact Information For CalRecycle's Hearing Clerk?**

All tire hearing papers must be filed with the Hearing Clerk in CalRecycle's Legal Office at the street address, fax number or email address below.

Hearing Clerk- TIR  
CalRecycle Legal Office  
801 K Street, MS 19-03  
Sacramento, CA 95814  
916-327-0089  
916-322-8768 FAX  
HearingClerk.TIR@CalRecycle.ca.gov

# CalRecycle Tire Hearing Subpoena Information

CalRecycle Tire Hearing Subpoenas cannot be used in CalRecycle Division of Recycling hearings.

## Can I subpoena witnesses to testify at the hearing?

Subpoenas may be issued to require witnesses to attend and testify at CalRecycle tire hearings. Witnesses are entitled to payment for their time and travel. Please see "I have received a subpoena to be a witness in a case. Can I be paid?" below.

## I want to receive copies of records held by someone else for my administrative hearing. How do I get them?

You are entitled to request discovery of the information CalRecycle has to prove the charges made against you or enable you mount a defense against them. Please see *Representing Yourself in a CalRecycle Tire Hearing* for more information.

You may also subpoena records from individuals, businesses, and government agencies to be produced at your hearing. A subpoena duces tecum means "bring with you under penalty of law" and compels the party served to bring records that they have to the hearing and to verify that the documents or records have not been altered. That may be done by declaration or by direct testimony, as you require.

## The form on the internet is not signed. Can I sign it?

Only CalRecycle Hearing Officers or attorneys licensed in California acting on behalf of a party may sign a subpoena. If you are proceeding without an attorney, contact CalRecycle's Hearing Clerk to obtain a blank subpoena form signed by a Hearing Officer.

Hearing Clerk- TIR  
CalRecycle Legal Office  
801 K Street, MS 19-03  
Sacramento, CA 95814  
916-327-0089  
916-322-8768 FAX  
HearingClerk.TIR@CalRecycle.ca.gov

## What laws should I look at before sending a subpoena or a subpoena duces tecum?

Code of Civil Procedure sections 1985-1987

Government Code sections 11450.05-11450.50, 68092.5-68093, and 68096.1-68097.10.

## I have received a subpoena to be a witness in a case. Can I be paid?

Yes, according to Government Code Sections 11450.05 and 11450.50, you may request witness fees and mileage actually traveled both ways. You may request payment in advance of the hearing from the party at whose request the subpoena or subpoena duces tecum is issued, which appears in item 1 of the CalRecycle Tire Hearing Subpoena form. See Government Code sections 11450.05, 11450.50, 68092.5-68093, and 68096.1-68097.10.